

Appln. No.: 10/687,566
Amendment dated September 14, 2005
Reply to Office Action of June 14, 2005

REMARKS

This Office Action of June 14, 2005 has been carefully reviewed and these remarks are response thereto. Claims 1-4, 12-16, 21, 26, 35, 42 and 45 were rejected as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 5,921,938 to Aoyama *et al.* ("Aoyama"). Claims 6-9 were rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama in view of U.S. Patent No. 6,869,966 to Sato *et al.* ("Sato"). Claims 17-18 and 43-44 were rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama in view of U.S. Patent No. 5,752,976 to Duffine *et al.* ("Duffine"). Claim 20 was rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama in view of U.S. Patent No. 6,480,743 to Kirkpatrick *et al.* ("Kirkpatrick"). Claims 54-55 were rejected as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 5,899,931 to Deschamp *et al.* ("Deschamp"). Claims 56-57 and 59 were rejected as being unpatentable under 35 U.S.C. §103(a) over Deschamp in view of Duffine. Claim 58 was rejected as being unpatentable under 35 U.S.C. §103(a) over Deschamp in view of Kirkpatrick. Claims 5, 10, 22-25, 27, 30, 36 and 60 were objected to as depending from rejected claims but were deemed allowable if rewritten in independent form to include the limitations of the base claim and any intervening limitations.

As an initial matter, Applicants would like to express their appreciation at the indication of allowable subject matter. Applicants believe additional allowable subject exists and the respectfully requests reconsideration in light of the following remarks.

Objected Figures

New figures are being submitted to overcome the objections regarding several figures. It is believed these newly submitted drawings overcome the objections to the drawings and therefore withdrawal of this objection is respectfully requested.

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Amended Claims

Claim 14 was amended. No new matter has been added and claim 14 is believed to be in condition for allowance. In addition, independent claim 42 was amended to correct an informality.

Objected Claims

Claims 5, 10, 22-25, 27, 30, 36 and 60 were objected as depending from rejected claims but were deemed allowable if rewritten in independent form. As will be discussed below, claim 1 is believed to be in condition for allowance. Therefore, claims 5, 10, 22-25, 27, 30, 36, which depend from claim 1, are believed to be in condition for allowance as currently written.

Claim 60 has been rewritten in independent form and is believed to be in condition for allowance. Notification of same is respectfully requested.

New claims

Claims 61-63 are new and depend from independent claim 60. No new subject matter has been added. Claims 61-63 are believed to be in condition for allowance for the reasons supporting the allowability of independent claim 60 and notification of same is earnestly sought.

Rejection under 35 U.S.C §103(a) - Aoyama

Claims 1-4, 12-16, 21, 26, 35, 42 and 45 were rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama. Claims 1 and 42 are independent.

Looking first at independent claim 1, the limitation "determining when the reference time equals the selected time" is recited. The Office Action suggests that element 118 of Figure 2a of Aoyama discloses this limitation. Turning to Aoyama, Figure 2a is directed towards a software

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routine for correcting time stamps received from a defibrillator/monitor 12. (Aoyama, C. 5, L. 26-30). In particular, element 118 is described as follows:

At a decision block 118, a determination is made of whether the transit time is less than or equal to the maximum time limit. The maximum time limit is acceptably between approximately 1 and 60 seconds, is suitably between approximately 5 and 10 seconds, and is preferably approximately 5 seconds.

(Aoyama, C. 6. L. 31-36). Applicants respectfully submit that a determination of "whether the transit time is less than or equal to the maximum time limit" as disclosed in Aoyama cannot fairly be equated with "determining when the reference time equals the selected time." The Office Action has not indicated that any other portion of Aoyama may be considered to meet this limitation of claim 1 nor has the Office Action suggested that any other reference may be used to correct this deficiency. Therefore, the Office Action fails to provide any reference that teaches, suggests or discloses all of the limitations of independent claim 1. Thus, the Office Action does not provide sufficient support for a *prima facie* case of obviousness with respect to claim 1. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criteria must be met. ... [Third], the prior art reference[s] ... must teach or suggest all the claim limitations."). Accordingly, Applicants believe independent claim 1 is allowable over the references of record.

Claims 2-4, 12-16, 21, 26, and 35 depend from claim 1 and are believed to be allowable for the reasons supporting the allowability of claim 1 and for the additional limitations recited therein.

Independent claim 42 is directed towards a system of synchronizing a plurality of clocks in a medical device system. Claim 42 recites a processor configured for "receiving a selected time associated with the second clock, the selected time different than a reference time that is

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associated with the first clock; and setting the second clock to the selected time so as to synchronize the first and second clock.”

The Office Action suggests that Aoyama, C. 7, L. 1-20 discloses a processor configured to “receiving a selected time associated with the second clock, the selected time different than a reference time that is associated with the first clock; and setting the second clock to the selected time so as to synchronize the first and second clock” as recited in independent claim 42.

Aoyama explains that:

Referring now to FIG. 2B, if the response from the defibrillator/monitor 12 is received within the maximum time limit, the software routine 100 continues to a block 124 where a comparison is made of the current defibrillator/monitor clock 20 time and the reference time determined from the master clock 38. The difference between the defibrillator/monitor clock 20 time and the reference time is saved in memory as a time difference Δt at a block 126. The time difference Δt is a time correction for updating event data time stamps and for updating the defibrillator/monitor clock 20. At a block 128, the central processing unit 36 associates the time difference Δt with the event data that has been previously transmitted from the defibrillator/monitor 12 and stored in the memory 42. At a block 130, the time difference Δt is also transmitted to the defibrillator/monitor 12 via the data communication link 16. The time difference Δt , rather than the reference time, is used as a time correction because the time difference Δt is independent of any time delays introduced in the requests for the defibrillator/monitor clock 20 time update via the data communication link 16.

(Aoyama, C. 7, L. 1-20). In short, the cited portion of Aoyama teaches to store a time difference Δt instead of setting the defibrillator/monitor clock 20. Applicants respectfully submit that storing a Δt as a correction factor is not the same as “setting the second clock to the selected time so as to synchronize the first and second clock” as recited in independent claim 42.

As the cited portions of Aoyama cannot be fairly read to disclose the recited limitation and no other reference of record has been suggested as disclosing this limitation, Applicants respectfully submit that the Office Action has failed to show every limitation of claim 42 is disclosed, suggested or taught by the references of record. Therefore, the Office Action has

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failed to provide support for a *prima facie* case of obviousness. Accordingly, independent claim 42 is believed to be allowable over the references of record.

Claim 45 depends from independent claim 42 and is believed allowable for at least the reasons supporting the allowability of claim 42 and for the additional limitations recited therein.

In light of the above, withdrawal of this ground of rejection is respectfully requested.

Rejection under 35 U.S.C §103(a) – Aoyama & Sato

Claims 6-9 were rejected under 35 U.S.C. §103(a) over Aoyama in view of U.S. Patent No. 6,869,966 to Sato *et al.* ("Sato").

The Office Action states that Aoyama fails to disclose the medical device system that provides treatment or monitoring of a nervous system disorder. The Office Action suggests, however, that Sato corrects this deficiency. The Applicants traverse this rejection in view of the following comments.

Sato is directed towards a drug. (Sato, Abstract). While the Office Actions suggests that Sato teaches the medical device system provides monitoring or treatment, this assertion is completely unsupported. The entire disclosure of Sato relates to variations in the drug. Thus, Aoyama and Sato are directed to different concepts. In addition, there is no teaching in Sato or Aoyama for how one would modify the system of Aoyama with the drug of Sato. Accordingly, not only is there no suggestion or motivation to modify or combine the two references, there is no teaching of how to modify or combine the references to arrive at the claimed inventions. Nor is there any apparent way to modify the system of Aoyama with the drug of Sato. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

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knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.").

Therefore, as there is no disclosure, suggestion or teaching for how one might use Saito to modify Aoyama, nor is there any apparent way to do so in view of the disparate subject matter of the two references, this rejection is improper.

Withdrawal of this ground of rejection is respectfully requested.

Rejection under 35 U.S.C §103(a) – Aoyama & Duffine

Claims 17-18 and 43-44 were rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama in view of Duffine.

Claims 17-18 depend from claim 1. As noted above, Aoyama fails to disclose at least one limitation of claim 1. The Office Action does not suggest that Duffine corrects this deficiency, nor do the Applicants believe that Duffine can be so read. Accordingly, the combination fails to support a *prima facie* case of obviousness with regard to independent claim 1. Therefore, claims 17-18 are nonobvious for at least the reasons that claim 1 is nonobvious.

Claims 43-44 depend from claim 42. As noted above, Aoyama fails to disclose all the limitations of claim 42. Duffine is not suggested as correcting the deficiency noted above. Thus, the references of record do not disclose, suggest or teach all the limitations of claim 42. Accordingly, the combination of the references of record fails to support a *prima facie* case of obviousness for claim 42. Therefore, claims 43-44 are nonobvious in view of the combination of Aoyama and Duffine for at least the reasons that claim 42 is nonobvious and for the additional limitations recited therein.

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Thus, the combination of Aoyama and Duffine fail to disclose, teach or suggest all the limitations of claims 17-18 and 43-44. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejection under 35 U.S.C §103(a) – Aoyama & Kirkpatrick

Claim 20 was rejected as being unpatentable under 35 U.S.C. §103(a) over Aoyama in view of Kirkpatrick.

As noted above, the Office Actions fails to provide sufficient support to make a *prima facie* case that Aoyama discloses, suggests, or teaches all the limitations of independent claim 1. The Office Action does not suggest that Kirkpatrick corrects the noted deficiency, nor do the Applicants believe that Kirkpatrick can be so read. Accordingly, the combination of Aoyama and Kirkpatrick does not support a *prima facie* case of obviousness with regard to independent claim 1. As claim 20 depends from independent claim 1, claim 20 is believed to be allowable for at least the reasons supporting the allowability of independent claim 1, and for the additional limitations therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejection under 35 U.S.C §103(a) – Deschamp & Duffine & Kirkpatrick

Claims 54-59 were rejected as being unpatentable under 35 U.S.C. §103 (a) over Deschamp, alone or in combination with Duffine or Kirkpatrick.

Deschamp includes a programmer 24 that has a programmable timing clock 42, adjustable in phase, which allows the timing clock 42 to synchronize its phase with a clock on an active implanted medical device. (Deschamp, Abstract). As Deschamp explains, the programmer sends a request message 130 to the implanted device and a message 132 is emitted

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by the implanted device, the message 132 timed by the implant clock pulses 126, and received by the programmer. (Deschamp, C. 7, L. 44-50). The message 132 is processed and the programmer clock is synchronized so as to be in phase with the implanted clock.

Independent claim 54 recites "providing a control message to the second clock from the programmer, the second clock associated with a medical device, wherein the providing of the control message synchronizes the time on the first clock and the second clock." Assuming for the purpose of argument that the Office Action is correct in suggesting that Deschamp can be read to meet the limitations of (a) and (b) by the receipt of the message 132 and the subsequent programming of the timing clock 42 in the programmer, Deschamp fails to disclose "providing a control message to the second clock from the programmer... wherein the providing of the control message synchronizes the time on the first clock and the second clock." Instead, Deschamp simply modifies the timing clock 42 in the programmer without providing a control message to the second clock in the implanted device.

Therefore, Deschamp fails to disclose, suggest or teach all the limitations of claim 54. The remaining references of record are not suggested to correct this deficiency, nor are they believed to be able to correct this deficiency. Thus, the references of record fail to disclose, suggest or teach all the limitations of claim 54. Accordingly, the references of record fail to support a *prima facie* case of obviousness. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criteria must be met. ... [Third], the prior art reference[s] ... must teach or suggest all the claim limitations."). Therefore, independent claim 54 is believed to be allowable over the references of record.

Claims 55-59 depend from claim 54 and are believed to be allowable for the reasons supporting the allowability of claim 54 and for the additional limitations recited therein.

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Accordingly, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

All rejections having been addressed, the Applicants respectfully submit the pending application is condition for allowance. A notice to this effect is earnestly requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,
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By


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